



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,304	05/31/2001	Balagurunathan Balasubramanian	Sprint IDF 1595 (4000-040	1603

7590 01/02/2004

Steven J. Funk
Sprint Law Department
8140 Ward Parkway
Kansas City, MO 64114

EXAMINER

PUENTE, EMERSON C

ART UNIT	PAPER NUMBER
----------	--------------

2113

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/871,304

Applicant(s)

BALASUBRAMANIAN ET AL.

Examiner

Emerson C Puentes

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 17-18 is/are rejected.
- 7) ☒ Claim(s) 1-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claims 1-18 have been examined.

Claim Objections

Claims 2, 10 and 13 are objected to because of the following informalities:

In regards to claim 2, "the response time"(see line 2 of claim) and "the monitoring program" (see line 3 of claim) lack antecedent basis.

In regards to claim 2, please change "one of the test **signal**" to "one of the test **signals**".

In regards to claim 10, please change "the second **element** is independent and distinct from the first **element**" to "the second **channel** is independent and distinct from the first **channel**" (see part d of claim).

In regards to claim 13, please change "the second **element** is independent and distinct from the first **element**" to "the second **object** is independent and distinct from the first **object**" (see part d of claim).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 1-17, the term "application" in claims 1-17 is a relative term which renders the claim indefinite. The term "application" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term "application" is defined in the dictionary as "a program designed to assist in the performance of a specific task" (see Microsoft Computer Dictionary 5th ed.). However, in the specification, the term "application" is used interchangeably with the term "component" or "device" (see page 7

Art Unit: 2113

paragraph 20; “a network computer system may contain numerous heterogeneous components such as web servers, name servers, ... The monitoring programs work in dependent threads to test functional elements of the monitored device”) and “system”(page 9 paragraph 23; “The capabilities of the monitored programs are not confined to these types of systems ...”). Applicant has not make certain whether to interpret the term “application” as defined in the dictionary, a component, device or system. For examination purposes, examiner will interpret “application” as one of a program, a component, device or system.

In regards to claim 10-12, the phrase “to elicit a response from a first channel” indicates the channel is able to respond. However, a channel is “a path or link through which information passes between two devices”. Thus, a channel is able to transmit responses, but not respond itself. For examination purposes, the examiner interprets “... elicit a response **from** a first channel...” to “... elicit a response **(through or via)** a first channel...”

In regards to claim 11 and 12, applicant discloses “wherein one of the first and second channels is a **receive** channel”(see claim 11) and “wherein the other of the first and second channels is a **subscribe** channel” (see claim 12). However, if a receive or subscribe channel is understood to be used for receiving data, then one should not be able to send or elicit a response from or through or via a receive or subscribe channel.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 6-10, 13, and 17 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by US Patent No. 6,249,886 of Kalkunte et al. referred hereinafter “Kalkunte”.

In regards to claim 1, Kalkunte discloses a computer implemented method for testing and monitoring applications, the method comprising:

Art Unit: 2113

sending a first test signal to elicit a response from a first element of an application.
Kalkunte discloses issuing commands (test signal) to the system under test (application) and the system under test may include one or more servers (elements) (see figure 1 and column 2 lines 47-50).

monitoring the application for the response to the first test signal (see column 2 lines 50-55)

checking the response to the first test signal (see column 2 lines 50-55).

sending a second test signal to elicit a response from a second element of the application, wherein the second element is independent and distinct from the first element (see figure 1 and column 2 lines 47-50)

monitoring the application for the response to the second test signal (see column 2 lines 50-55)

checking the response to the second test signal (see column 2 lines 50-55)

reporting the results of checking the responses to the first and second test signals (see column 5 lines 55-60)

In regards to claim 2, Kalkunte discloses wherein the results comprise the response time from the sending of one of the test signal to the receiving of the response to that test signal by monitoring program (see column 3 lines 55-60) and the time at which that test signal was sent (see column 6 lines 25-28).

In regards to claim 3, Kalkunte discloses wherein the reporting the results comprises sending notification based on the presence of predefined results (see column 11 lines 5-23 and column 12 lines 55-60)

In regards to claim 6, Kalkunte discloses wherein reporting results comprises recording the results in a datastore (see figure 11 item 422 and column 9 lines 50-52 and column 12 lines 14-16)

In regards to claim 7, Kalkunte discloses wherein recording the results in a datastore comprises storing the results in a text file (see figure 11 item 422 and column 9 lines 50-52).

In regards to claim 8, Kalkunte discloses wherein recording the results in a datastore comprises storing the results in a relational database (see column 12 lines 14-16)

In regards to claim 9, Kalkunte discloses wherein reporting the results comprises:

Art Unit: 2113

sending notification based on the presence of the predefined results (see column 11 lines 5-23 and column 12 lines 55-60); and

recording the results in a datastore (see figure 11 item 422 and column 9 lines 50-52)

In regards to claim 10, Kalkunte discloses a computer implemented method for testing and monitoring applications, the method comprising:

sending a first test signal to elicit a response from a first channel of an application.

Kalkunte discloses issuing commands (test signal) to the system under test (application) and the system under test may include one or more servers. It is inherent each server has a channel wherein it connects to other devices, thus indicating sending a first test signal to elicit a response from a first channel of an application (see figure 1 and column 2 lines 47-50).

monitoring the application for the response to the first test signal (see column 2 lines 50-55)

checking the response to the first test signal (see column 2 lines 50-55).

sending a second test signal to elicit a response from a second channel of the application, wherein the second channel is independent and distinct from the first channel
Kalkunte discloses issuing commands (test signal) to the system under test (application) and the system under test may include one or more servers. It is inherent each server has a channel wherein it connects to other devices, thus indicating sending a second test signal to elicit a response from a second channel of an application (see figure 1 and column 2 lines 47-50).

monitoring the application for the response to the second test signal (see column 2 lines 50-55)

checking the response to the second test signal (see column 2 lines 50-55)

reporting the results of checking the responses to the first and second test signals (see column 5 lines 55-60)

In regards to claim 13, Kalkunte discloses a computer implemented method for testing and monitoring applications, the method comprising:

sending a first test signal to elicit a response from a first object of an application.

Kalkunte discloses issuing commands (test signal) to the system under test (application) and the

Art Unit: 2113

system under test may include one or more servers (objects) (see figure 1 and column 2 lines 47-50).

monitoring the application for the response to the first test signal (see column 2 lines 50-55)

checking the response to the first test signal (see column 2 lines 50-55).

sending a second test signal to elicit a response from a second object of the application, wherein the second object is independent and distinct from the first object (see figure 1 and column 2 lines 47-50)

monitoring the application for the response to the second test signal (see column 2 lines 50-55)

checking the response to the second test signal (see column 2 lines 50-55)

reporting the results of checking the responses to the first and second test signals (see column 5 lines 55-60)

In regards to claim 17, see basis for rejection for claim 1. Claims 17 is simply a computer program product comprising a computer readable medium that stores computer codes for implementing the method set forth in claim 1, and therefore is necessarily included in the teachings of Kalkunte.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kalkunte in view of US Patent No. 6,449,739 of Landen et al. referred hereinafter "Landen".

Art Unit: 2113

In regards to claim 4 and 5, Kalkunte fails to disclose wherein sending notification comprises sending a page or an email.

However, Landen discloses notifying by a pager or an email (see column 8 lines 10-15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made wherein sending notification comprises sending a page or an email. A person of ordinary skill in the art would have been motivated to make the modification because Kalkunte discloses sending notification and Landen discloses emailing and paging as appropriate and known communication methods for notification (see column 8 lines 10-15).

Claim 18 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kalkunte in view of US Patent No. 5,920,722 of Damron et al. referred hereinafter "Damron".

In regards to claim 18, Kalkunte fails to disclose wherein the computer readable medium is a code representation embodied in a carrier wave.

Damron teaches program code can be embodied as a computer data signal in a carrier wave, indicating wherein the computer readable medium is a code representation embodied in a carrier wave (see column 5 lines 20-25)

It would have been obvious to one of ordinary skill in the art at the time the invention was made wherein the computer readable medium is a code representation embodied in a carrier wave. A person of ordinary skill in the art would have been motivated to make the modification because having a data signal embodied in a carrier wave, as per teachings of Damron, constitutes as a known implementation of the computer program (see column 5 lines 20-25).

Allowable Subject Matter

Claim 14-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Art Unit: 2113

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

See Form PTO-892.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emerson C Puente whose telephone number is (703) 305-8012. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W Beausoliel can be reached on (703) 305-9713. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5631.

Emerson Puente

12/24/03


ROBERT BEAUSOLIEL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100